

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF IOWA
3 WESTERN DIVISION

4 United States of America,

5 Plaintiff,

6 No. CR07-4092-LRR

7 vs.

8 Victor Gutierrez,

9 Defendant.

10 * * * * *

11 Excerpt of transcript of proceedings held at
12 the Federal Courthouse, Sioux City, Iowa, on the 12th
13 day of February, 2009, commencing at 1:28 p.m.,
14 pursuant to assignment, reported by Karrie D. Truitt,
15 CSR, RPR.

16 * * * * *

17 Before: Chief Judge Linda R. Reade

18 * * * * *

19 Appearances:

20 Forde Fairchild
21 Assistant U.S. Attorney
22 600 4th Street, Suite 670
23 Sioux City, Iowa 51101 for the Plaintiff.

24 John P. Greer
25 Attorney at Law
26 P.O. Box 215
27 13 W. 4th Street
28 Spencer, Iowa 51301-0215 for the Defendant.

29 * * * * *

30 Transcript ordered the 15th day of February, 2017.
31 Transcript delivered the 16th day of March, 2017.

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1 P R O C E E D I N G S

2 THE COURT: You may be seated.

3 All right. Are we ready to begin?

4 MR. GREER: Yes, Your Honor.

5 MR. FAIRCHILD: Yes, Your Honor.

6 THE COURT: The matter before the Court is
7 United States of America versus Victor Gutierrez,
8 Criminal Number 74092. This is a sentencing
9 proceeding. Mr. Gutierrez is here with his attorney,
10 John Greer. Assistant United States Attorney
11 Forde Fairchild represents the United States. Also
12 present is Shane Moore. Mr. Moore is the probation
13 officer who wrote the pre-sentence information with
14 the Court. We're working with the report dated
15 January 12, 2009.

16 Mr. Gutierrez, do you recall when you and I
17 were together on September the 22nd, 2008, and I took
18 your plea?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you recall pleading guilty at
21 that time to six federal crimes charged in a second
22 superseding indictment?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: I want to just review those
25 charges and go over the statutory penalties with you.

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1 Do you recall pleading guilty to counts 1 and 2
2 charging you with the possession of a firearm by a
3 felon?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you remember when we were
6 last together we went over the statutory penalties
7 for those offenses? Each is punishable by zero to
8 ten years in federal prison. Probation is an option
9 on each of those counts, and were probation to be
10 granted, it would be one to five years in duration of
11 supervised release on each count of conviction.
12 Counts 1 and 2 would be up to three years. Your fine
13 would be up to \$250,000 on each count of conviction,
14 and each count of conviction has a \$100 special
15 assessment. Do you remember that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you recall pleading guilty to
18 counts 3 and 4, the second superseding indictment
19 charging you with possession of a firearm with an
20 obliterated serial number?

21 DEFENDANT: Yes, Your Honor.

22 THE COURT: And the statutory penalty for
23 that is zero to five years in prison. Again,
24 probation is an option. If granted, it would be one
25 to five years in duration of supervised release up to

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1 three years for each count of conviction, a fine of
2 up to \$250,000 on each count of conviction and a \$100
3 special assessment on each of those two counts. Do
4 you remember that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you recall pleading guilty to
7 Count 5 of the indictment charging you with
8 conspiracy to possess a firearm with an obliterated
9 serial number?

10 DEFENDANT: Yes, Your Honor.

11 THE COURT: The penalty is zero to five
12 years. Probation is an option. Were it granted, it
13 would be one to five years in duration with
14 supervised release on this count up to three years, a
15 fine of up to \$250,000, and, again, you would have to
16 pay a \$100 special assessment. Do you remember that?

17 DEFENDANT: Yes, Your Honor.

18 THE COURT: The final count that you pled to
19 was count 6, conspiracy to possess a firearm by a
20 felon. Do you remember that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: The penalty is zero to five
23 years in prison. Probation, were it granted, would
24 be one to five years in duration with supervised
25 release up to three years, a fine of up to \$250,000,

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1 and you would have to pay a \$100 special assessment.
2 Do you recall that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand you are in
5 court this afternoon for the purpose of being
6 sentenced on pleas of guilty?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you still admit to being
9 guilty of all six counts that you pled guilty to back
10 in September?

11 THE DEFENDANT: Yes.

12 THE COURT: The Court has received and read
13 the presentence investigation report. I have
14 reviewed the plea agreement again. I have reviewed
15 the memos filed by the attorneys on behalf of their
16 respective clients. Other than what's in the
17 official records of the Court, the Court has no
18 independent information concerning Mr. Gutierrez.

19 Mr. Fairchild, have you had an opportunity
20 on behalf of the United States to review the
21 presentence investigation report?

22 MR. FAIRCHILD: Yes, Your Honor.

23 THE COURT: After having done so, any
24 remaining objections to the computation of the
25 Advisory Sentencing Guidelines?

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1 MR. FAIRCHILD: No, Your Honor.

2 THE COURT: Mr. Greer, have you and
3 Mr. Gutierrez been through the report?

4 MR. GREER: Yes, Your Honor.

5 THE COURT: Will you make a record, please,
6 as to how you went about reviewing the report with
7 your client?

8 MR. GREER: It's been quite a while. I have
9 sent him a copy of the first draft and went over all
10 of the paragraphs with him. I always do that.
11 Victor's pretty intelligent and speaks English, and I
12 can't remember if I did that in person or not. I
13 know I have personally met with him since he received
14 that. I know that the -- We were pretty detailed in
15 our first objections to the initial draft, which were
16 filed back on November 26, 2008, Your Honor. We have
17 been aware of what's in -- contained in the final and
18 amended copy for some time now.

19 THE COURT: All right. Any remaining
20 objections to the computation of the Advisory
21 Guidelines sentence?

22 MR. GREER: No, Your Honor.

23 THE COURT: Mr. Gutierrez, do you recall
24 receiving a copy of the draft presentence
25 investigation report?

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1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And did you have an opportunity
3 to read that report with your own eyes?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Did you in fact read it?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: After you have had a chance to
8 read it, did you have as much time as you wanted to
9 to discuss the report and the issues raised with your
10 attorney?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Were there any questions you put
13 to your attorney that he did not answer to your
14 satisfaction?

15 THE DEFENDANT: No. He answered.

16 THE COURT: Then the Court accepts the
17 computation of the Advisory Guidelines sentence. And
18 I'm beginning on page 11 of the report. With regard
19 to counts 1 and 2, which are the possession of a
20 firearm by a felon counts, counts 3 and 4, the
21 possession of a firearm with obliterated serial
22 numbers and the two conspiracies, the base offense
23 level is a 20. This is because the offense involved
24 at least one semi-automatic firearm capable of
25 accepting a large-capacity magazine, and the

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1 defendant was a prohibited person at the time he
2 committed the offense.

3 There's a four-level increase because at
4 least one of the firearms had an obliterated serial
5 number, another four-level increase because the
6 defendant used or possessed one or more firearms or
7 ammunition in connection with another felony offense,
8 and specifically, intimidation with a dangerous
9 weapon and going armed with intent, both violations
10 of Iowa law. So the adjusted offense level is 28.

11 At this point the Court preliminarily grants
12 the two-level reduction for acceptance of
13 responsibility. I say that because in the event
14 during this sentencing that I hear things that
15 suggest to me that the defendant is not taking full
16 responsibility for his actions, the Court reserves
17 the right to go back and deny the two-level reduction
18 for acceptance. So that gives us an adjusted offense
19 level of 26.

20 The defendant has a criminal history
21 category 6. So under the Advisory Guidelines, the
22 guideline provisions are 120 to 150 months in federal
23 prison. Probation is not an option. Supervised
24 release would be two to three years, a fine of
25 \$12,500 to \$125,000, and defendant would have to pay

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1 a \$600 special assessment. That's \$100 on each count
2 of conviction.

3 I'm now ready to hear from the attorneys on
4 the issue of disposition. Mr. Fairchild?

5 MR. FAIRCHILD: Thank you, Your Honor. The
6 United States and the defense attorney have agreed
7 that the sentence at the very top end of the range is
8 appropriate. The only issue apparently open for
9 trial -- sentencing resolution is whether or not that
10 should be consecutive in part or in whole or
11 concurrent in part or in whole with the previous
12 undischarged state offense.

13 The United States stands on its brief
14 outlining its position in favor of a fully-
15 consecutive sentence. I have provided a courtesy
16 copy. I have provided a binder for the Court, which
17 should be before the court. In addition, I do have
18 an untimely exhibit I would like to offer as well or
19 a demonstrative. It's the firearm itself, which is
20 now back from the ATF locker. I realize it is
21 untimely, but I am prepared to offer it as an exhibit
22 or demonstrative.

23 THE COURT: All right. First let's take up
24 the exhibit booklet that was sent to me in advance.
25 There's Exhibit 181B, 5.1 through 5.4, 6.1 through

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1 6.3, 7.1 through 7.3, 8.1 through 8.3, 9.1 through
2 9.14. Any objections, Mr. Greer?

3 MR. GREER: My only objection would be that
4 it -- really as far as the title of it being a
5 rebuttal exhibit, I don't think it's really rebutting
6 anything. The government filed a sentencing
7 memorandum saying there aren't any issues, we're not
8 going to call any witnesses, we don't have any
9 exhibits, we have agreed to 150 months. I responded
10 and said you're absolutely right.

11 I said -- I did mention to Mr. Fairchild the
12 only thing that hadn't been spelled out in the plea
13 agreement that his office prepared was whether it
14 would be consecutive or concurrent to the state
15 charge which Mr. Gutierrez was already serving. That
16 matter is completely discretionary in Your Honor.
17 I'm not going to violate the terms of the defendant's
18 plea agreement, but I don't see how my having just
19 raised this issue that was just out there -- it
20 doesn't really matter too much anyway, because I
21 understand this discharge date on the failure to
22 affix drug tax stamp charge, the state charge, would
23 be August 16th of '09, that was his expected
24 discharge date. Probably the state of Iowa is not
25 going to want him back.

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1 THE COURT: My guess is based on my years in
2 state court and federal court, the state will
3 immediately parole to the federal detainer to open
4 another bed space in their facilities.

5 MR. GREER: That's what I guessed as well,
6 Your Honor.

7 THE COURT: Well, let me ask you this a
8 little differently. What's the prejudice? Isn't all
9 of this in the presentence report?

10 MR. GREER: It is, Your Honor. My only --
11 I'm not objecting to it, except I am making a record
12 that I don't believe there's anything that I did to
13 negate the plea agreement or open any doors for
14 anything else in this case.

15 MR. FAIRCHILD: I don't believe the defense
16 attorney has negated the plea agreement. I think
17 what he did by definition is to put at issue
18 something that wasn't understood. It is extra to the
19 plea agreement. It is exactly the kind of material
20 that one would think would invite rebuttal exhibits.
21 I offer them as rebuttal exhibits.

22 THE COURT: First of all, the Court sees no
23 prejudice in receiving further information that
24 already visually depicts what's in the presentence
25 investigation report. I think when the defense

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1 attorney suggested that these -- that the crimes that
2 Mr. Gutierrez pled guilty to in federal court should
3 be sentenced concurrently with the state charges, I
4 think that raises the issues for which these exhibits
5 would be relevant. Because one of the things the
6 Court has to consider in deciding concurrent or
7 consecutive are that I have to consider all the
8 statutory factors at 18USC 3553(a). So I think these
9 exhibits become relevant, and the Court does accept
10 them.

11 With regard to the semi-automatic weapon
12 that was used in the offense, I don't know that I
13 need to take that as an exhibit, but certainly if you
14 want to show it to the Court, I would be happy to
15 view it.

16 MR. FAIRCHILD: I would do so at this time
17 then, Your Honor.

18 THE COURT: All right.

19 MR. FAIRCHILD: I am standing up with a
20 semi-automatic weapon pictured in the exhibits and
21 discussed at length in the offense conduct statement.
22 It is without a stock, semi-automatic pistol grip,
23 obliterated serial number. I can make it available
24 for further inspection.

25 THE COURT: Mr. Greer, would you like to

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1 look at the weapon?

2 MR. GREER: No, Your Honor.

3 MR. FAIRCHILD: May I approach?

4 THE COURT: Yes. And this has been made
5 safe by the Marshal Service?

6 MR. FAIRCHILD: Yes, Your Honor. There is a
7 tag.

8 THE COURT: So I did admit, I think, the
9 paper Exhibits 1A through 9.14 and all the subparts.

10 All right, Mr. Fairchild, is there further
11 record that you would like to make on this
12 disposition?

13 MR. FAIRCHILD: No, Your Honor. Thank you.

14 THE COURT: Mr. Greer, now is the time to
15 hear from defense counsel on the issue of this
16 disposition.

17 MR. GREER: Thank you. May it please the
18 Court, I did submit an exhibit letter from
19 Mary Freeman. I'll offer that into evidence.

20 MR. FAIRCHILD: No objection.

21 THE COURT: Received.

22 MR. GREER: As far as disposition, I would
23 encourage the Court to adopt the agreement that the
24 government and the defendant made in this case as an
25 extra and how it fits into the presentence report. I

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1 would remind the Court I think what was conveyed the
2 day of the plea taking, which was somewhat late in
3 the proceedings, the name of a person in jail with
4 Victor was listed as a witness. He was listed as a
5 witness, so somebody said Victor told me he was the
6 shooter in this case.

7 We were late in the matter, and I see the
8 PSIR calculated in the guidelines doesn't only give
9 him two levels now for the acceptance. The other
10 thing on that that was important to me --

11 THE COURT: I'm sorry, I don't understand
12 your point. What are you talking about? The
13 agreement, I think, is as set out in the presentence
14 report. Are you arguing that your client should have
15 had one additional level for acceptance or what are
16 you arguing here?

17 MR. GREER: No. I'm asking the Court to
18 abide by the plea agreement and sentence him with
19 150, and I'm explaining why he only -- why his plea
20 was late in forthcoming. And also what this
21 gentleman said was that Victor was very sorry about
22 this. And this is somebody in jail, this isn't the
23 probation officer or the policeman.

24 MR. FAIRCHILD: Objection; I don't believe
25 this is in the record, Your Honor.

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1 MR. GREER: It's in the discovery file.

2 THE COURT: All right. First of all, I
3 don't know anything about who you're talking about or
4 how this is exactly relevant. Mr. Fairchild, do you
5 know who he's talking about?

6 MR. FAIRCHILD: He is talking about a person
7 with -- I'm a little bit reluctant as to how much
8 detail to go into. This Court has previously
9 sentenced two men. He is talking about one of whom
10 whose identity was withheld from the discovery file
11 until probably a month or so before trial. If I
12 might respond more broadly to one thing Mr. Greer
13 said?

14 THE COURT: Yes.

15 MR. FAIRCHILD: The second fellow, so the
16 first person who wasn't in the discovery file until
17 later, he did, as Mr. Greer said, hide this firearm
18 and then have a conversation with the defendant.
19 However, long before that, the person in the back
20 seat of the car who witnessed Mr. Gutierrez fire the
21 weapon in the drive-by shooting, his information was
22 fully in the discovery file.

23 So not only do I not understand this to be
24 relevant in any way whatsoever given the plea
25 agreement, but I don't understand how an eyewitness

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1 testimony of a person during the shooting is less
2 important than the eyewitness testimony of someone
3 who later on hid the firearm.

4 THE COURT: Yeah. I'm not following this at
5 all, because I thought there was an agreement at
6 150 months. The Court, of course, doesn't have to
7 adopt that agreement between the parties, and as I'll
8 get into in a few more minutes, there's more than
9 enough for the Court to depart upward beyond
10 150 months. But I would advise you that you have to
11 be careful that you're not persuading the Court not
12 to adopt the 150 months that the parties have agreed
13 to.

14 MR. GREER: I'm not going to do that at all.

15 THE COURT: I'm not following the relevance
16 of what you're telling me. Go ahead.

17 MR. GREER: I'll simply say no more and have
18 the case submitted and see if Mr. Gutierrez, I'm
19 sure, will be given an opportunity to allocute and
20 tell you how sorry he is about his actions in this
21 case.

22 THE COURT: Mr. Gutierrez, this is the time
23 in the proceeding when you have an opportunity to
24 speak. You are not required to say anything, but I'm
25 willing to listen to anything you would like to say.

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1 THE DEFENDANT: First of all, I just want to
2 say I'm sorry for what I did. You know, drugs had a
3 big factor to it. At the time when it happened, I
4 wasn't aware that anyone was in the house.

5 (Request by the Court Reporter for Defendant
6 to speak up.)

7 THE COURT: I think the last thing she got
8 was at the time that it happened, I wasn't aware that
9 anyone was in the house.

10 THE DEFENDANT: I'm thankful that nobody got
11 hurt. What -- There was drugs involved, gang
12 activity and stuff. The only thing I can say is
13 thank God nobody was hurt, because I'd be in a worse
14 situation than I was now. I do regret what I did.
15 It ain't something that I do all the time. It will
16 never happen again, I know that. Just -- I don't
17 know what to say. I'm pretty nervous right now. I
18 don't know what to say. I just hope that you agree
19 with the -- you know, the agreement.

20 THE COURT: Mr. Fairchild, anything else,
21 sir?

22 MR. FAIRCHILD: No. Thank you, Your Honor.

23 THE COURT: Mr. Greer?

24 MR. GREER: No, Your Honor.

25 THE COURT: Then the Court is ready to make

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1 its findings. In arriving at a sentence, the Court
2 is required to consider all the statutory factors at
3 18 United States Code, Section 3553(a). One of the
4 factors, of course, is the restitution factor. And,
5 Mr. Fairchild, certainly the victim's family whose
6 home was shot up are true victims here and would be
7 invited by the Court to speak at this sentence
8 proceeding as well as to claim restitution against
9 these individuals who fired on their home.

10 MR. FAIRCHILD: Thank you, Your Honor. The
11 United States has communicated a similar sentiment to
12 the victims in this case. For a combination of
13 reasons, they do not want to appear. They do not
14 want to stand in a courtroom with Mr. Gutierrez and
15 explain fully the impact upon them by his conduct.

16 THE COURT: Are those individuals requesting
17 a no-contact order?

18 MR. FAIRCHILD: They have not requested it
19 Your Honor. It might be prudent, Your Honor.

20 THE COURT: Then on the issue of
21 restitution, which is one of the 3553(a) factors, the
22 Court recognizes there are identifiable victims of
23 this offense that would be entitled to restitution,
24 but the victims have made no claim and have declined
25 the invitation to appear and be heard or to file

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1 anything regarding the impact of this crime on their
2 lives.

3 When we begin the sentencing procedure, the
4 first thing we do is compute the Advisory Guidelines
5 for sentencing using the United States Sentencing
6 Guidelines and the policies of the Sentencing
7 Commission. I now confirm that the total offense
8 level is 26, criminal history category 6. The Court
9 is required to consider the statutory provisions and
10 the kinds of sentences available under the statutes
11 of conviction. I have done that. We have made our
12 record on that.

13 The Court has considered the nature and
14 circumstances of the offense and the history and
15 characteristics of the defendant. Mr. Gutierrez is
16 age 28, he has two dependent children that are in the
17 care of his mother. This offense, of course, as
18 detailed very thoroughly by Mr. Moore in his report,
19 involves a gang-related drive-by shooting at the home
20 of a rival gang member with a semi-automatic firearm
21 with an obliterated serial number.

22 People were home when the house was sprayed
23 with live rounds, and fortunately no one was injured.
24 It is a little naive to suggest that there was no way
25 the defendant and his gang would have known that it

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1 was an unoccupied house. It's not like this was a
2 boarded-up house that had stood vacant. It was
3 obviously a residence occupied by a family, and I
4 don't really find it particularly relevant whether or
5 not the defendant knew that someone was or was not
6 home at the particular time.

7 You have to ask yourself too, do those who
8 do drive-by shootings plan to do them when no one is
9 home so that the shock value does not register? That
10 doesn't make sense to me. I rather think drive-by
11 shootings are done with people at home so that the
12 message is delivered to the rival gang. But that's
13 just my opinion of it.

14 Defendant's criminal conduct began in his
15 teens, age 14. He started with larceny thefts,
16 possession of marijuana. His first adult convictions
17 began at age 18, and already has so many of them that
18 I frankly gave up counting. I have got at least
19 three assaults here, numerous possession of drugs and
20 drug paraphernalia. I gave up counting the license
21 and driving offenses, the alcohol offenses. He has
22 failures to appear, possession of forged instruments
23 and at least two OWIs that I counted.

24 The OWIs and the assaults are violent
25 criminal behavior in the opinion of the Court.

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1 Obviously the assaults are because you're beating on
2 someone. The OWIs are because of the risk that they
3 pose to innocent members of the public who are out on
4 the roadways and the sidewalks and also law
5 enforcement officers who have a sworn duty to protect
6 the public from people who drive who are drunk.

7 Defendant has 24 criminal history points
8 that score, and of course we know that only 13 of
9 those are needed for a category 6. Clearly this
10 defendant is a career criminal at age 28. He's an
11 alcohol and street drug abuser. He has had treatment
12 and was offered follow-up treatment and declined
13 that.

14 He has had limited lawful employment. When
15 we look at conditions of supervised release, clearly
16 we're going to be focusing on abstinence from drugs
17 and alcohol and testing and treatment to assure the
18 same. Mr. Gutierrez is going to have to have full-
19 time verifiable employment, because people succeed on
20 supervision who have jobs and who are kept busy.
21 And, of course, we are going to also focus on his
22 prior gang activity and make sure that he is not
23 associating with gangs while he's under the
24 supervision of the Court.

25 This is clearly a case where the Court, but

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1 for the agreement of the parties, would have departed
2 upward because of the defendant's prior criminal
3 history and the likelihood of recidivism, the gang
4 activity and the drugs. But the Court does respect
5 that the attorneys, who know much more about the case
6 than the Court, have arrived at 150 months as a
7 disposition, and the Court respects that process and
8 the considerations that went into it.

9 With regard to the concurrent versus
10 consecutive sentencing, I do have the power under
11 5G1.3(c) to impose a sentence in the instant offense
12 to run concurrently, partially concurrently or
13 consecutively to the undischarged term of
14 imprisonment in the state system to achieve a
15 reasonable punishment for the instant offense.
16 Comment 3 to the Guidelines sets forth the factors
17 that the Court should consider in making its
18 decision, and Mr. Fairchild discussed those in his
19 brief on pages 3 and 4.

20 The Court notes that the state sentence and
21 the criminal behavior leading to the conviction in
22 the state system are not related to the offenses of
23 conviction in the federal system except to the extent
24 that they're both serious criminal activity and have
25 a common theme of being drug-related.

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1 Defendant was sentenced in state court to an
2 indeterminate sentence of five years in October of
3 2007, and I think as Mr. Greer pointed out and the
4 Court agrees, it is very unlikely that he'll serve
5 five years. Generally as soon as there is a federal
6 conviction, whether it's good or bad, the State
7 paroles to the federal detainer. Statistically it's
8 no secret that, in Iowa, prisoners serve a very small
9 percentage of the sentence that's imposed.

10 The federal criminal conduct leading to the
11 instant charge was very serious. It was intentional,
12 it was premeditated, and it is the opinion of the
13 Court that the punishment that the defendant serves
14 in the state system should be a severe punishment
15 that's not diluted by concurrent sentences, and
16 similarly, the state conduct was serious and is
17 deserving of separate punishment undiluted by the
18 federal sentence. So for those reasons the Court
19 will be running the state sentence consecutively --
20 or will be running the federal sentence consecutively
21 to the state sentence. I suspect, as Mr. Greer
22 points out, that it really won't make much
23 difference, however.

24 So before I formally impose a sentence,
25 Mr. Fairchild, is there anything else you would like

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1 to say?

2 MR. FAIRCHILD: No, Your Honor.

3 THE COURT: Mr. Greer?

4 MR. GREER: Only, Your Honor, that Victor
5 would like a recommendation that he participate in a
6 drug treatment program, and he would like to be as
7 near to the Sioux City area as possible. His
8 preference would be Oxford, if his classification
9 meets that criteria.

10 THE COURT: On the issue of drug treatment,
11 he may or may not qualify for the 500-hour program
12 based on his violent past and the violence involved
13 in this offense, but I will recommend some type of
14 drug treatment. I do not specifically designate to
15 any BOP facility. I can't designate and I don't
16 recommend. And the reason I don't give
17 recommendations is I think the Bureau of Prisons is
18 in a much better position to evaluate the security
19 issues and your client's needs, and so I just stay
20 totally out of that and leave it to the Bureau of
21 Prisons.

22 Then it is the judgment of the Court that
23 Victor Gutierrez is hereby committed to the custody
24 of the Bureau of Prisons to be imprisoned for a total
25 term of 150 months. This term consists of 120 months

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1 on count 1 and count 2 of the superseding indictment
2 and 60 months on counts 3 through 6 of the
3 superseding indictment. Actually I think it's a
4 second superseding indictment.

5 I order that these terms of imprisonment be
6 served concurrently with each other, but that
7 30 months of the term imposed on count 1 of the
8 superseding indictment be imposed to run
9 consecutively to the terms imposed on counts 2 to
10 through 6 of the superseding indictment. This is how
11 we get a resulting total term of 150 months. All
12 counts shall run consecutively or back to back with
13 the sentence imposed in Woodbury County Case Number
14 FECR 054664.

15 The Court makes two recommendations to the
16 Bureau of Prisons, first, that the defendant
17 participate in a drug abuse treatment program, and
18 second, that he be designated to a Bureau of Prisons
19 facility in close proximity to his family,
20 commensurate with his security and custody and
21 classification need.

22 Mr. Gutierrez, when you get out of prison
23 you'll be on supervised release for a term of three
24 years. This term consists of three years on counts 1
25 through 6 of the second superseding indictment, and

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1 these terms will be served concurrently.

2 Within 72 hours of release from custody of
3 Bureau of Prisons you shall report in person to the
4 probation office in the district to which you are
5 released. While you're on supervised release you
6 shall comply with the standard conditions of
7 supervision. Those will be set out in the judgment
8 order.

9 In addition, you must not commit any
10 federal, state or local crimes, you shall not
11 illegally possess a controlled substance, you shall
12 not possess a firearm, ammunition, a destructive
13 device or dangerous weapon, and you shall cooperate
14 in the collection of a DNA sample.

15 I want to remind you that even after you are
16 off court supervision you cannot possess a firearm or
17 ammunition for any reason. If you do, you will --
18 you will probably be apprehended, and were you to be
19 convicted, you would be facing a very serious fine --
20 time in prison, a fine and other punishment,
21 especially in light of your very serious criminal
22 history.

23 While on supervised release you must comply
24 with the following conditions, these will be
25 implemented by probation. First, you must

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1 participate in and successfully complete a program of
2 testing and treatment for substance abuse. Second,
3 you cannot use alcohol while you're under court
4 supervision, and you cannot enter bars, taverns or
5 other establishments whose primary source of income
6 is derived from the sale of alcohol. Third, you must
7 obtain verifiable employment, and it must be
8 pre-approved by your probation officer.

9 Fourth, you must not knowingly associate
10 with any member, prospect or associate member of any
11 gang without the prior approval of the probation
12 officer. If you are found to be in the company of
13 such individuals while wearing the clothing, colors
14 or insignia of a gang, the Court will presume that
15 this association was for the purpose of participating
16 in gang activities.

17 Fifth, you will be subject to the standard
18 search conditions of this Court. Any search will be
19 based on reasonable suspicion and will be conducted
20 in a reasonable manner, and the specifics of the
21 condition will be set out in the judgment order.
22 Sixth, you are to have no contact directly or
23 indirectly with the victim of this crime or his
24 family members. And when I say no contact, that
25 means you are not allowed to speak to them, to call

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1 them on the phone, send them messages on the
2 computer, and you are not indirectly to have any
3 contact with them. And by that I mean you can't tell
4 your friend, hey, Fred, go tell Mr. Victim blah,
5 blah, blah. If you do that, you are in violation of
6 this Court's conditions, and it would be under these
7 circumstances almost certainly a trip back to prison.

8 I find that you do not have the ability to
9 pay a fine, and no fine is imposed. I order that you
10 pay to the United States a special assessment of \$100
11 per count of conviction for a total of \$600. That is
12 due and payable immediately. There are advantages to
13 having your special assessment paid before you are
14 designated to a Bureau of Prisons facility. So if
15 you have \$600 or your family does, I recommend that
16 that be paid to the clerk of court today, and their
17 offices are in this building.

18 Defendant shall forfeit to the United States
19 all property set forth in this preliminary order of
20 forfeiture entered January 26, 2009, as Document
21 Number 40 in the records of the Court pursuant to
22 18 United States Code Section 3143(a)(2). You are
23 hereby immediately remanded to the custody of the
24 United States Marshal to be returned to the State of
25 Iowa Department of Corrections to serve the remainder

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1 of your state term of imprisonment.

2 Mr. Gutierrez, pursuant to the written plea
3 agreement, you have given up your right to appeal
4 except in very limited circumstances. If you think
5 that one of those limited circumstances applies, then
6 the way you would file an appeal is to file a written
7 notice of appeal with the clerk of court here in the
8 United States District Court for the Northern
9 District of Iowa at Cedar Rapids, Iowa.

10 If you do not file a written notice of
11 appeal within the next ten days, you forever give up
12 your right to challenge this judgment and sentence.
13 If you would like to appeal and you cannot afford the
14 services of an attorney, the Court will appoint an
15 attorney to represent you on appeal.

16 Mr. Fairchild, I don't think we have any
17 counts to be dismissed, do we?

18 MR. FAIRCHILD: Correct. The United States
19 is not dismissing any counts.

20 THE COURT: Mr. Gutierrez, I want to just
21 talk about one other thing with you -- and I'm hoping
22 that Mr. Greer will do this as well -- you have a
23 lengthy history in the state court system, and you've
24 violated court supervision many times and really did
25 not suffer very dire consequences as a result. You

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1 need to know that the federal system is entirely
2 different. This is a zero-tolerance court. That
3 means if you use drugs, if you don't report in, if
4 you commit other criminal acts while you're under
5 court supervision, you run a very real chance of
6 being returned to prison.

7 You're going to be in prison for 150 months.
8 There's programming in the Bureau of Prisons. If you
9 want to make changes in your life, the opportunities
10 will be there. If you don't, then when you come out,
11 you'll probably be in and out of this court for a
12 very long time. So I would urge you to rethink how
13 you have been leading your life, give some thought to
14 making some changes, and take some action to make
15 that happen.

16 Mr. Gutierrez, I have covered a lot of
17 material today. Was there anything that I talked
18 about that you did not understand or you would like
19 me to talk about in more detail?

20 THE DEFENDANT: No, Your Honor. I
21 understand.

22 THE COURT: Good luck to you. Thank you.

23 (Proceedings concluded at 2:11 p.m.)
24
25

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1 CERTIFICATE

2 I, the undersigned, a Certified Shorthand
3 Reporter of the State of Iowa, do hereby certify that
4 I acted as the Certified Shorthand Reporter in the
5 foregoing matter at the time and place indicated
6 herein; that I took in shorthand the proceedings had
7 at said time and place; that said shorthand notes
8 were reduced to print under my supervision and
9 direction by means of computer-aided transcription;
10 and that the foregoing pages are a full and correct
11 transcript of the shorthand notes so taken.

12

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand this 16th day of March, 2017.

15

16

17 /s/ Karrie Truitt

18 Karrie D. Truitt

19 Certified Shorthand Reporter

20

21

22

23

24

25

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